

DRAFT

CHAPTER 355: COASTAL SAND DUNE RULES

SUMMARY: This chapter clarifies the criteria for obtaining a permit under Maine's Natural Resources Protection Act (NRPA) for an activity proposed within areas defined as coastal sand dune systems. It outlines standards that a proposed activity must satisfy in order to be permitted under this chapter. This chapter also lists activities exempted from authorization under this chapter. A list of permit application requirements and a sample application form are provided at the end of this document.

- 1. Preamble.** Coastal sand dune systems are fragile, dynamic resources that comprise only about 2 percent of Maine's overall coastline. These sandy stretches are considered resources of state significance since they act as natural barriers that protect the shoreline from storm events. In addition, they have great scenic beauty and unique characteristics. They provide vital habitat for a variety of wildlife and they provide unsurpassed recreational opportunities. Many of the sandy beaches and dunes along Maine's coastline are eroding, in part, due to a scientifically documented rise in relative sea level. In addition, attempts to prevent erosion and flooding through the construction or enlargement of seawalls harms the beach and dune system. Seawalls reflect waves onto the beach causing sand to be scoured away and they cut off the natural supply of sand to the beach from the sand dune behind the wall.

The department recognizes the dynamic nature of coastal sand dunes in response to the changing conditions of water levels, waves, and winds. The extent to which sea level will change in the future is uncertain. However, under any scenario of increasing sea level, the extensive development of sand dune areas and the construction of structures increase the risk of harm, to both the sand dune system and the structures themselves.

In order to protect valuable coastal sand dunes, to permit the natural supply and movement of sand between beaches and dunes, and to prevent the creation of flood hazards, the department will evaluate proposed developments with consideration given to future sea level rise and will impose restrictions on the density and location of development and on the size of structures.

Proposed activities in a coastal sand dune system must meet the standards set forth in this chapter and 38 M.R.S.A. § 480-D. As a term or condition of a permit, additional requirements may be established by the department to ensure that the proposed activity will meet the statutory criteria. The department will deny a permit if the proposed activity does not meet the statutory criteria and standards contained in this chapter.

2. Applicability

- A. Activity requiring individual permit.** This chapter applies to an activity in a coastal sand dune system that requires an individual permit as identified in 38 M.R.S.A. § 480-C of the Natural Resources Protection Act (NRPA). Certain activities taking place in a coastal sand dune system

DRAFT

may also be in a coastal wetland, as defined in 38 M.R.S.A. § 480-B, and be subject to both this chapter and Chapter 310, the Wetland Protection Rules.

- B. Activity for which this chapter is not applicable.** This chapter does not apply to an activity that is exempt from permit requirements under the NRPA or that qualifies for a NRPA Permit By Rule (PBR).

3. Definitions

- A. Assessed value.** The assessed value of a building established by the town and adjusted by the certified ratio used by the town on the date that the application is received by the department.

- B. A-Zone.** That land area of special flood hazard subject to a one percent or greater chance of flooding in any given year. These areas are designated as Zones A, A1-A99, AH or AO on a town's Flood Insurance Rate Map (FIRM). The flood elevation or depth of flooding is usually shown on the map.

Note: AO-Zones involve more sand transport and hazard to property than other A-Zones. FEMA recommends Coastal AO-Zones be treated as V-Zones for design and risk analysis. In terms of sand transport and flooding, AO-Zones act more like V-Zones, with only a foot of sea-level rise (or lowering of the beach and dune profile) an AO-Zone will become a V-Zone.

- C. B-Zone.** Area between the special flood hazard areas (A-Zones and V-Zones) and the limits of the 500-year flood. This zone also includes areas of 100-year shallow flooding where water depths are less than one foot or the flooded area is less than one acre in size. This zone may be represented as a Shaded X-Zone on FIRM maps dated after 1985.

- D. Back dunes.** Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.

- E. Beach.** The zone of unconsolidated sand or gravel that extends landward from the mean low water line to the seaward toe of a dune. The definition of beach includes the beach face and berm.

- F. Beach face.** The sloping portion of a beach that is below the high tide limit, and is usually exposed to wave action.

- G. Beach nourishment.** The artificial addition of sand or gravel to a beach or subtidal area adjacent to a beach.

- H. Berm.** The flat or gently sloping area between the high tide limit and the frontal dune. A berm is formed by deposition of sand transported to shore by tides, waves, wind, and currents.

DRAFT

- I. Building.** A structure designed for habitation, shelter, storage, or as a gathering place that has a roof. For the purposes of this rule, the foundation is considered to be a part of the building. A building may also include a porch attached to the exterior walls of the building.
- J. Coastal sand dune systems.** (Also referred to as coastal sand dune system in this chapter). “Coastal sand dune systems” means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands. Coastal sand dune systems include dunes that may have been artificially created, dunes that may have been altered by development activity, and dunes supported by sand fencing or stabilization structures. Coastal sand dune systems naturally migrate landward through the process of overwash. For the purposes of this definition, a small windblown accumulation of sand within a street is not considered a dune.
- Most coastal sand dune systems have been identified by the Maine Geological Survey (MGS) and are shown on maps entitled *Beach and Dune Geology Aerial Photos* dated 2001 and *Coastal Sand Dune Maps* dated 1990. Maps are available for review at town offices and regional department offices. Maps are available for purchase through MGS.
- K. Closed fence.** A fence that effectively blocks the movement of wind, water, or sand, such as a stockade fence.
- L. Department.** The Department of Environmental Protection.
- M. Development.** The alteration of property for human-related use including, but not limited to: buildings, decks, driveways, parking areas, lawns, landscaped areas, and areas of non-native vegetation, and any other appurtenant facilities, but excluding temporary structures.
- N. Dune grass.** A grass species native to coastal sand dune systems with the scientific name *Ammophila breviligulata* and commonly referred to as American beach grass.
- O. Dune restoration.** Restoration of a natural or artificially constructed dune through the addition of sand and planting of native dune vegetation.
- P. Dune Vegetation.** Natural dune plant community including, but not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.
- Q. Emergency action.** Action undertaken to stabilize a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system that has been destroyed or is threatened by collapse due to natural causes. Natural causes do not include threats to the integrity of the structure resulting from the lack of normal maintenance and repair. Emergency action may include the placement of riprap, sand bags, or other heavy non-hazardous material to shore up the threatened structure. It

DRAFT

may also include action taken to strengthen the structure, including widening the footings or securing the structure to the sand dune with bolts.

- R. Essential Habitat.** Areas currently or historically providing physical or biological features essential to the conservation of an Endangered or Threatened Species in Maine and which may require special management considerations.
- S. FEMA.** The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program (NFIP) and produces the Flood Insurance Rate Maps and Flood Insurance Studies.
- T. Footprint.** The outline that would be created on the ground by extending the exterior walls of the building to the ground surface. For the purposes of this chapter, a porch is not considered when determining the building's footprint.
- U. Foundation.** The portion of a structure that transmits the loads of the structure to the ground, including but not limited to: spread footings, foundation walls, posts, piers, piles, beams, girders, structural slabs, bracings, and associated connectors.
- V. Frontal dune.** The frontal dune is the area consisting of the most seaward ridge of sand and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with natural flora and may consist in part or in whole of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge.
- W. Lot.** A piece of land measured and marked by metes and bounds descriptions or by some other approved surveying technique.
- X. Maintenance and repair.** Work done to less than 50% of a structure to prevent decline, to hold or preserve it in an existing state or condition, or restore it to sound condition after damage or decay. For work to qualify as maintenance and repair, the dimensions (height, width and length) of the repaired structure must not exceed the dimensions of the structure as it existed 24 months prior to the repair and the structure to be repaired must have been existence and in use for a period of at least one year prior to the maintenance and repair activity. To qualify as maintenance and repair under this chapter, the cost (including the value of labor and materials) of a building's maintenance and repair is limited to less than 50% of its assessed value. A closed fence may not be reconstructed in any A-zone, B-zone, V-zone, or shaded X-zone after being damaged by an ocean storm.

DRAFT

- Y. NGVD.** National Geodetic Vertical Datum (NGVD). The base (0.00) elevation point from which land measurements are derived. This elevation was established by the National Ocean Service in 1929 and was formerly called "sea level datum of 1929" or "mean sea level". It generally marks the intersection of the sea with the land.
- Z. Ocean storm.** A low-pressure system often accompanied by flooding or erosion of the coastal sand dune system.
- AA. Open fence.** A fence through which water, wind and sand can easily move, for example, a split rail or snow fence.
- BB. Overwash area.** An area subject to the accumulation of sediment, usually sand or gravel that is deposited landward of a beach or dune by the rush of water (usually in response to an ocean storm) over a beach berm, sand dune, or structure. An overwash area, through stabilization and vegetation, may become part of the coastal sand dune system. The landward limit of the overwash area is the inland limit of sediment transported by water; the seaward limit is the seaward toe of the former dune, or, in the absence of a dune, the landward limit of the beach.
- CC. Permanent structure** (also referred to as a "structure" in this chapter). Permanent structure means any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year, including, but not limited to: buildings, swimming pools, fences, seawalls, roads, driveways, parking areas, and walkways. Permanent structure does not include natural features, such as frontal dunes. For the purposes of this chapter, open decks and storage sheds that comply with the criteria outlined below are not considered to be structures.
- (1) Open decks that do not exceed a total of 200 square feet, including any existing decks on the property, that are not located in a V-Zone and that are supported by posts elevated at least 3 feet above existing grade to allow unobstructed flow of sand, wind and water.
 - (2) One storage shed per lot that does not exceed 100 square feet, provided that it is not located in a V-Zone and that it is not converted to a habitable structure.
- DD. Posts.** Any pilings or column support that allows water and sand to move freely underneath the structure, and which is adequate to provide a foundation for the structure it supports. The term "posts" does not include frost wall or breakaway foundation construction.
- EE. Project.** Any activity that falls under the jurisdiction of the NRPA and is located in the coastal sand dune system. To determine compliance with the standards in this chapter, the department will take into consideration topography and potential shoreline changes in its review of any activity.

DRAFT

- FF. Reconstruction.** Any rehabilitation, replacement or other improvement to a building the cost of which equals or exceeds 50% of a building's assessed value before the start of the reconstruction.
- GG. Seawall.** Vertical wall, or other sloped barrier that separates land from water areas, commonly constructed out of rocks, wood, concrete or other similar materials, generally built for the purpose of protecting structures or property from shoreline erosion caused by wave or current action. A seawall is presumed to be a permanent structure.
- HH. Severe damage.** Damage that exceeds 50% of a building's assessed value.
- II. Temporary structure.** A structure intended for seasonal use and in place less than 7 months each year.
- JJ. X-Zone (Shaded).** An area between the special flood hazard areas (A-Zones and V-Zones) and the limits of the 500-year flood. This zone also includes areas of 100-year shallow flooding where water depths are less than one foot or the flooded area is less than one acre in size. This zone may be represented as a B-Zone on FIRM maps dated prior to 1985.
- KK. V- Zone.** That land area of special flood hazard subject to a one- percent or greater chance of flooding in any given year, and subject to additional hazard from high velocity water due to wave action. Wave heights or wave run-up depths are equal to or greater than 3 feet in V-Zones.
- 4. Review not required.** This section clarifies when certain activities in coastal sand dune systems do not require approval pursuant to the NRPA. Permits are required for all other projects.
- A. De minimus activity.** The following have impacts and are activities not considered to be included in the listed activities requiring a permit at 38 M.R.S.A. § 480-C(2).
- (1) Construction of a walkway or path on area of the lot that has already been developed.
 - (2) Removal of debris from a beach, provided that little or no sand is removed with the debris.
 - (3) The addition of loam, up to 3 inches in depth, to maintain an existing lawn.
 - (4) Removal of sand from lawns, walkways, roads, driveways, parking areas, and buildings, provided the sand is placed back into the coastal sand dune system without disturbing beach vegetation. Sand placed on the beach must be spread out to a height no greater than 3 inches above the existing beach grade.
- B. Temporary structure.** Construction of a temporary structure does not require a permit. Construction of a permanent structure requires a permit, as listed at 38 M.R.S.A. § 480-C(2)(D).

DRAFT

C. Maintenance and repair. A permit is not required for maintenance and repair activity that comes under the statutory exemption at 38 M.R.S.A. 480-Q(2).

(1) The maintenance and repair exemption does not apply if:

- (a) The repair is to more than 50% of a structure located in a coastal sand dune system;
- (b) The repair would result in an additional intrusion into the coastal sand dune system;
- (c) The dimensions of the repaired structure would exceed the dimensions of the structure as it existed 24 months prior to the repair; or
- (d) The structure has been officially included in or is considered by the Maine Historical Preservation Commission as eligible for listing in the National Registrar of Historic Places and the dimensions of the repaired structure would exceed the dimensions of the historic structure.

(2) The following specific activities are considered to come within the maintenance and repair exemption.

- (a) Maintenance and repair of an existing building's foundation provided the foundation type and the dimensions of the foundation remain the same.
- (b) Maintenance and repair of an underground storage tank.

D. Emergency actions. An exemption for certain emergency actions may be allowed in accordance with 38 M.R.S.A. § 480-W provided that the local Code Enforcement Officer (CEO) or state certified geologist determines, based on a site visit, that the integrity of the structure is destroyed or threatened, and notifies the department of that determination within 48 hours of beginning repairs, and provided that a project designed to repair the structure is submitted to the department and local CEO for certification within three months of the emergency action. The proposed repair design must include removal of the temporary material used to stabilize the threatened structure. Under all circumstances, the emergency stabilization material must be removed from the coastal sand dune system within 1 year of its placement.

If the local CEO fails to determine whether the integrity of the structure is destroyed or threatened within 12 hours of initial contact by the property owner, the property owner may proceed as if the CEO had determined that the integrity of the structure was destroyed or threatened.

DRAFT

If the property owner submits a design that is in compliance with the standards for seawall replacement under Chapter 305, Permit By Rule, the department approval of the PBR notification form will act as the certification notice.

5. Standards for all projects

Note: Selected activities may be eligible under Chapter 305, Permit By Rule.

- A. Buildings damaged by ocean storms.** A building located in a V-Zone that has been damaged 50% or more of its assessed value due to an ocean storm may not be reconstructed.
- B. Timeframe for building reconstruction.** All building reconstruction that does not qualify as maintenance and repair (Sections 3(X) and 4(C)) requires a permit. The building to be reconstructed must currently exist or have existed within one year of the date the application is received by the department.
- C. Development on individual lots.** Development on an individual lot is restricted as follows:
- (1) No more than 40% of a lot may be covered by development, including land area previously developed; nor may the total area to be covered by buildings exceed 20% of the lot, including existing buildings. Lawns and other areas filled for landscaping are considered development and must be included in the development calculations.
 - (2) Where development that presently exists or did exist within one year of the date that the application is received by the department exceeds 40% of the total lot area, the percentage of developed area may not be increased.
 - (3) Where building coverage that presently exists or did exist within one year of the date that the application is received by the department exceeds 20% of the total lot area, the percentage of area covered by buildings may not be increased.
 - (4) Land area within the V-zone may not be included as part of a lot for the purposes of this section.
- D. Shoreline changes within 100 years.** A project may not be permitted if, within 100 years, the project may reasonably be expected to be located on the beach as a result of changes in the shoreline after allowing for a three foot rise in sea level over 100 years. Reliance upon an existing seawall is not sufficient as evidence of site stability. Beach nourishment and dune restoration projects are excluded from this requirement.
- E. Building size restrictions.** No building greater than 35 feet in height or covering a ground area greater than 2,500 square feet may be constructed in a coastal sand dune system unless the applicant demonstrates by clear and convincing evidence that the site will remain stable after

DRAFT

allowing for a three foot rise in sea level over 100 years. Reliance upon an existing seawall is not sufficient as evidence of site stability. An existing building may be elevated on a post or pile foundation to exceed 35 feet for the sole purpose of meeting the standards in Sections 6(E) and 7(C) without the need to demonstrate by clear and convincing evidence that the site will remain stable after allowing for a three foot rise in sea level over 100 years.

Note: When determining the height of the building, the measurement is taken from the existing, highest natural elevation within the building's footprint if the lot is undeveloped or the highest natural elevation measured 5 feet from the corners of the existing building foundation.

F. Seawalls. No new seawall may be constructed and no existing seawall may be expanded or replaced except as provided under Chapter 305, Permit By Rule.

G. Essential habitat. A project may not unreasonably harm Essential Habitat within the coastal sand dune system. A project located partially or wholly within an area designated as Essential Habitat must obtain an Essential Habitat evaluation from the Department of Inland Fisheries & Wildlife (IF&W). Essential Habitat maps are available in affected town offices, IF&W offices, and department offices.

Note: IF&W has identified nesting areas for piping plovers and least terns as Essential Habitat under the Maine Endangered Species Act (12 M.R.S.A. §§ 7751-7756).

H. Fences. To allow for the movement of sand, no closed fence may be placed in any A-Zone, B-Zone, V-Zone, or shaded X-Zone. Open fences may not be placed on the beach face unless the fence is used to keep pedestrian traffic off dune vegetation or away from shore bird nesting or breeding areas.

I. Legal access. A project may not unreasonably interfere with legal access to or use of the public resources.

J. Restoration of disturbed areas. All disturbed areas in excess of the standards in Section 5(C) shall be returned to their original condition within one year after completion of construction.

6. Standards for frontal dune projects

A. General standards. Each frontal dune project must meet the standards for all projects contained in Section 5.

B. New construction in frontal dunes. A new structure or addition to an existing structure may not be constructed on or seaward of a frontal dune with the exception of the following.

- (1) Elevated boardwalks constructed perpendicular to the beach face, open fences, walkways, and driveways.

DRAFT

- (2) Fire escapes constructed on existing buildings or structures as required by local fire codes.
- (3) Ramps that are required to meet the Americans with Disabilities Act (ADA), provided a building served by a ramp itself meets ADA requirements, or a public ramp providing access to a beach.
- (4) The construction of vertical building additions and the addition of dormers provided that:
 - (a) The addition does not extend horizontally beyond the footprint covered by the existing building;
 - (b) The addition does not increase the building's total height to greater than 35 feet above the highest natural elevation measured 5 feet from the corners of the existing building foundation; and
 - (c) The building is not a garage or a storage shed.
- (5) Notwithstanding Section 6(C), the construction of a new building or buildings on an undeveloped lot, provided that the following requirements are met. These provisions do not apply to a lot vacant due to demolition or destruction of buildings after August 1, 1983.
 - (a) The undeveloped lot was a lot of record as of August 1, 1983.
 - (b) The adjacent lot on both sides of the undeveloped lot, along the length of the frontal dune, contains a residential building that is located within 100 feet of the lot line of the vacant lot.
 - (c) The undeveloped lot is not precluded from development by any other federal, state, or local requirements.
 - (d) All available variances of municipal regulations that would allow the project to proceed in compliance with the standards in Section 7 have been ruled upon and rejected by the municipality.
 - (e) Any building on the undeveloped lot will be constructed at the furthest distance from the beach face possible, as determined by the department.
 - (f) The total area to be covered by a building or buildings may not exceed 20% of the total area of the undeveloped lot. Up to 500 square feet of additional development may occur on the undeveloped lot in order to provide parking and access, including access for the purposes of meeting ADA requirements.

DRAFT

- (g) Any building or buildings will be elevated on posts as described in Section 6(E).
- (h) The department may require sand dune mitigation and enhancement measures, including: restoring the dune topography and elevating the crest of the sand dune to the 100 year flood/wave runup level; and provisions to enhance with native vegetation the remaining portions of the lot not covered by buildings or parking areas.
- C. Construction in V-Zone.** No new structure or addition to an existing structure may be constructed in a V-zone. A building in a V-Zone may not be reconstructed unless the following standards are met as determined by the department:
- (1) The building was involuntarily destroyed by fire and the reconstructed building does not exceed the dimensions of the previously existing building; or
 - (2) The building is located in a V-Zone designated after January 1, 1999 by FEMA for the NFIP.
- D. Reconstructed buildings.** A building may be reconstructed in the same location or a location no farther seaward than the previously existing building. The reconstruction of the building may not increase the footprint of the building. Reconstructed buildings may not exceed the height or dimensions of the previously existing building unless the project also proposes to construct a vertical addition that meets all the requirements of Section 6(B)(4) or to elevate the building to meet the requirements of Section 6(E).
- E. Sand and Water movement.** To allow for the movement of sand and water and future shoreline changes, all buildings modified or reconstructed pursuant to Sections 6(B)(4) or 6(D), except for detached buildings that are used as storage sheds and garages, must have the lowest portion of the structural members of the lowest floor constructed on a post or piling foundation, and be elevated either: 1) 3 feet above the highest existing elevation within the building's footprint or the highest natural elevation measured 5 feet from the corners of the existing building foundation; or 2) the elevation required in the local municipal floodplain ordinance, whichever is greater. The post or piling foundation may be enclosed with latticework or other similar material through which water, wind and sand can easily move.

Note: The department recommends that projects are constructed according to the Coastal Construction Manual, published by FEMA, describes the best practices for residential construction in coastal areas that can be used to help create sustainable and livable coastal communities. The Coastal Construction Manual is available for review at Town Offices and regional department offices. A copy can be obtained by writing to:

FEMA
PO Box 2012
Jessup, MD 20794-2012

DRAFT

Ask for a copy of the Coastal Construction Manual; publication #8-0373; FEMA 055. The manual is available in print and on CD-ROM.

7. Standards for back dune projects

- A. General standards.** Each back dune project must meet the standards for all projects contained in Section 5.
- B. Building location.** No building may be constructed such that any part extends seaward of a line drawn between the seaward most point of buildings on adjacent properties.
- C. Unstable back dune areas.** Certain back dune areas have been identified as areas that may not be stable within 100 years due to changes in the shoreline. New buildings, additions to existing buildings, and reconstructed buildings located in those areas must meet the standards of Section 6(E). In certain cases, the department may approve a different foundation type based on site specific information.

Note: These areas of concern have been identified on a set of coastal sand dune maps that is available for review in the department's Southern Maine Regional Office.

8. Variances

- A. Eligibility for a variance.** The Board may grant a variance from Subsections 5(A), 5(C)(4), 6(B) and 6(C) of this chapter for the construction of a building on a property under single ownership if the applicant is eligible under one of the two qualifying conditions below and if the Board determines that the criteria set forth below have been met.
 - (1) A court has determined that the denial of a permit under this chapter would constitute a constitutional taking of property; or
 - (2) The Board finds that strict application of the standard(s) from which a variance is sought would result in undue hardship. The Board may find that undue hardship exists only when:
 - (a) The undeveloped lot was a lot of record as of August 1, 1983;
 - (b) The property cannot be put to a reasonable economic use unless a variance is granted. In making this determination, the Board shall consider evidence of the value of the property when it was purchased or acquired, the reasonable expectations of the applicant for use of the property when it was purchased or acquired, and the value and possible uses of the property without the requested variance;
 - (c) The hardship is not the result of action taken by the applicant or a prior owner;

DRAFT

(d) There are no practicable measures or alternatives that would allow the project to proceed in compliance with the standard(s) from which a variance is sought. The applicant must demonstrate that he/she has explored all alternatives that would allow the project to proceed in compliance with the standard(s) from which a variance is sought, and must explain to the satisfaction of the Board why each such alternative is unavailable or unreasonable; and

(e) The project will not alter the essential character of the locality.

B. Location and design of project. When an applicant has demonstrated that he/she is eligible for a variance under Section 8(A), the applicant also must demonstrate that the proposed project meets the applicable standards of Sections 5 and 6 of this chapter, for which a variance is not being granted, and the following criteria to minimize impacts on the protected resources:

- (1) The proposed building will be built at the location on the lot which is the greatest distance reasonably possible from the beach face, as determined by the Board;
- (2) The proposed building will be elevated on posts as described in Section 6(E);
- (3) The total area to be covered by a building may not exceed 20% of the total area of the undeveloped lot. Up to 500 square feet of additional development may occur on the undeveloped lot in order to provide parking and access, including access for the purposes of meeting ADA requirements.
- (4) As a condition for the issuance of a variance, the Board may require sand dune mitigation and enhancement measures such as restoration of the dune topography, including the elevation of the crestline to the 100 year flood/wave runup level and provisions to enhance with native vegetation the remaining portions of the lot not covered by buildings or parking areas.

C. Subsequent variance. An applicant who has obtained a variance under this section may not obtain a subsequent variance under this section for the same property if the structure on the property is destroyed by encroachment of the water or an ocean storm.

9. Standard conditions of permits. The following standard conditions apply to all permits granted under this chapter, unless otherwise specifically stated in the permit.

A. Shoreline recession. If the shoreline recedes such that a coastal wetland, as defined under 38 M.R.S.A. § 480-B(2), extends to any part of the structure, including support posts, but excluding seawalls, for a period of six months or more, then the approved structure along with appurtenant facilities must be removed and the site must be restored to natural conditions within one year.

B. Removing debris. Any debris or other remains from damaged structures on the property must be removed from the coastal sand dune system.

DRAFT

- C. Natural dune vegetation.** The applicant must restore any disturbed areas of natural beach vegetation as quickly as possible. Natural dune vegetation includes, but is not limited to American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.
- D. Approval of variations from plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted by the applicant. Any variation from these plans, proposals and supported documents is subject to review and approval prior to implementation.
- E. Compliance with all applicable laws.** The applicant must secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- F. Compliance with all permit terms and conditions.** The applicant must submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this permit. All preconstruction terms and conditions must be met before construction begins.
- G. Initiation of activity within two years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant must reapply for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits must state the reasons why the activity was not begun within two years from the granting of the initial permit and the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplication for permits may include information submitted in the initial application by reference, but must include documentation of any changes on the site.
- H. Reexamination after five years.** If the approved activity is not completed within five years from the date of the granting of a permit, the department may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances that may have occurred during the five-year period.
- I. Permit included in contract bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- J. Permit shown to contractor.** Work done by a contractor pursuant to this permit may not begin before the applicant has shown the contractor a copy of this permit.

AUTHORITY: 38 MRSA §§ 343-A and 471-478

DRAFT

EFFECTIVE DATE: August 1, 1983
Amended (Section 4I): OCTOBER 23, 1984
Amended: JANUARY 4, 1988.
Amended: June 16, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

DRAFT